

Judge Robert S. Lasnik

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MAR 16 2004

AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN H. WHITE,

Defendant.

NO. CR03-0370RSL

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, Kurt P. Hermanns and Floyd G. Short, Assistant United States Attorneys for said District, and the defendant, JOHN H. WHITE, and his attorney, Todd Maybrown, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charge contained in the Indictment. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

a. Conspiracy, as charged in Count 1, in violation of Title 18, United States Code, Section 371.

2. Elements of the Offense. The elements of the offense of conspiracy, as charged in Count 1, in violation of Title 18, United States Code, Section 371, are as follows:



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1 First, that the defendant did knowingly conspire, combine, confederate, and
2 agree together with others to commit offenses against the United States;

3 Second, that the defendant knew the unlawful purpose of the agreement and
4 joined in it willfully, that is, with the intent to further the unlawful purpose; and

5 Third, that one of the conspirators during the existence of the conspiracy
6 knowingly committed at least one of the overt acts described in the indictment, in order to
7 accomplish some object or purpose of the conspiracy.

8 3. The Penalties. Defendant understands that the statutory penalties for the
9 offense of conspiracy, as charged in Count 1, are as follows:

10 a. Count 1 (Conspiracy): imprisonment for up to five (5) years, a fine
11 of up to two hundred fifty thousand dollars (\$250,000.00), a period of supervision
12 following release from prison of at least two (2) but not more than three (3) years, and a
13 one hundred dollar (\$100.00) penalty assessment. The defendant agrees that the penalty
14 assessment shall be paid at or before the time of sentencing.

15 Defendant agrees that any monetary penalty the Court imposes, including
16 the special assessment, fine, costs or restitution, is due and payable immediately, and
17 further agrees to submit a completed Financial Statement of Debtor form as requested by
18 the United States Attorney's Office.

19 Defendant understands that supervised release is a period of time following
20 imprisonment during which he will be subject to certain restrictions and requirements.
21 Defendant further understands that if supervised release is imposed and he violates one or
22 more of its conditions, he could be returned to prison for all or part of the term of
23 supervised release that was originally imposed. This could result in Defendant serving a
24 total term of imprisonment greater than the statutory maximum stated above.

25 4. Rights Waived by Pleading Guilty. Defendant represents to the Court that
26 he is satisfied with the representation provided by his attorney. Defendant understands
27 that, by pleading guilty, he knowingly and voluntarily waives the following rights:

28 a. The right to plead not guilty, and to persist in a plea of not guilty;

- 1 b. The right to a speedy and public trial before a jury of Defendant's
2 peers;
- 3 c. The right to the effective assistance of counsel at trial, including, if
4 Defendant could not afford an attorney, the right to have the Court appoint one for
5 Defendant;
- 6 d. The right to be presumed innocent until guilt has been established at
7 trial, beyond a reasonable doubt;
- 8 e. The right to confront and cross-examine witnesses against
9 Defendant;
- 10 f. The right to compel or subpoena witnesses to appear on Defendant's
11 behalf;
- 12 g. The right to testify or to remain silent at trial, which such silence
13 could not be used against Defendant; and
- 14 h. The right to appeal a finding of guilt or any pretrial rulings.

15 5. Applicability of Sentencing Guidelines. Defendant understands and
16 acknowledges the following:

- 17 a. The United States Sentencing Guidelines, promulgated by the
18 United States Sentencing Commission, are applicable to this case;
- 19 b. The Court will determine Defendant's applicable Sentencing
20 Guidelines range at the time of sentencing;
- 21 c. The Court may impose any sentence authorized by law, including a
22 sentence that, under some circumstances, departs from any applicable Sentencing
23 Guidelines range up to the maximum term authorized by law;
- 24 d. The Court is not bound by any recommendation regarding the
25 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
26 range offered by the parties, or by the United States Probation Department; and
- 27 e. Defendant may not withdraw a guilty plea solely because of the
28 sentence imposed by the Court.

1 6. Ultimate Sentence. Defendant acknowledges that no one has promised or
2 guaranteed what sentence the Court will impose.

3 7. Restitution. Defendant shall make restitution in an amount set by the court.
4 Said amount shall be due and payable immediately and shall be paid in accordance with a
5 schedule of payments as set by the United States Probation Office and ordered by the
6 Court.

7 8. Statement of Facts. The parties agree on the following facts in support of
8 Defendant's guilty plea and for purposes of calculating the base offense level of the
9 Sentencing Guidelines. Defendant admits he is guilty of the charged offense.

10 a. At all relevant times JOHN WHITE was an employee, share-holder
11 and vice-president of Signal Mortgage, Inc., of Everett, Washington. In that capacity he
12 acted as a loan broker, assisting individuals in obtaining financing primarily for
13 residential properties.

14 b. Beginning in approximately August 1999, Terry R. Martin requested
15 Mr. WHITE's assistance with a commercial construction project, called the Silver Sound
16 Corporate Center, located near Paine Field, Everett, Washington. Mr. Martin sought
17 financing for the project. Mr. WHITE understood from Martin and others that there
18 would be a municipal bond offering by the Holmes Harbor Sewer District ("the District"),
19 in the approximate amount of \$20,000,000, to fund the public infrastructure and utilities
20 for the project. Mr. WHITE understood further that Martin intended to build a 500,000
21 square foot corporate center for which he sought construction financing from Mr.
22 WHITE.

23 c. Between about August 1999 and about July 2000, at Mr. Martin's
24 direction, Mr. WHITE wrote a series of letters on Signal Mortgage letterhead, confirming
25 and committing as much as \$63,000,000 in loan funds for construction and credit support
26 for Mr. Martin's Silver Sound Corporate Center project. Those letters were false and
27 fraudulent. Neither Signal Mortgage, nor any prospective lender Mr. WHITE contacted,
28 committed to lending Mr. Martin funds. Through numerous conversations, Mr. Martin

1 was aware that no such financing existed. Nevertheless, Mr. Martin directed and partially
2 authored the false letters. The letters were mailed, using the U. S. Postal Service, and
3 were faxed by wire communication in interstate commerce.

4 d. Between approximately December 1999 and February 2000, Mr.
5 WHITE assisted Martin in obtaining an appraisal for the Silver Sound Corporate Center
6 project. When the appraisal was issued, Martin stated that the "as is" value of the land on
7 which the project was to be constructed needed to be eliminated from the appraisal. The
8 effect of eliminating this information from the appraisal was to conceal Martin's purchase
9 price for the land from the broker-dealers, investors and the District. Thereafter, Mr.
10 WHITE and Mr. Martin arranged for a new appraisal to be issued, which omitted the "as
11 is" value. That appraisal eventually became a document relied upon by broker-dealers,
12 municipal bond investors and the District.

13 e. In approximately April 2000, Mr. WHITE signed and executed a
14 construction loan agreement, with Signal Mortgage as the lender, in the amount of
15 \$63,000,000 for construction of Mr. Martin's project. Mr. WHITE simultaneously
16 executed an additional \$20,500,000 construction loan agreement, also with Signal
17 Mortgage as the lender, which guaranteed repayment of the municipal bonds in the event
18 of default. Both agreements were false and fraudulent. No loan funds existed. Signal
19 Mortgage, the ostensible lender and employer of Mr. WHITE, was unaware of the project
20 and the agreements, and had no ability to fund such loans. Mr. WHITE kept the details of
21 his dealings with Mr. Martin, including the referenced loan commitments, secret from
22 Signal Mortgage.

23 f. In approximately June of 2000, Mr. WHITE attended a meeting with
24 Terry Martin and others where the Silver Sound project was explained to investors
25 considering purchasing the municipal bonds. During that meeting, Mr. WHITE affirmed
26 the existence of a binding loan commitment for construction and a binding loan
27 commitment guaranteeing repayment of the municipal bonds. This affirmation was false
28 and fraudulent. Mr. WHITE knew there were no loan commitments.

1 g. Beginning in approximately June of 2000 and continuing through
2 August of 2000, Terry Martin informed Mr. WHITE that he was not obliged to complete
3 construction of the Silver Sound Corporate Center. During these discussions, Mr. Martin
4 stated that he might not use any financing that might be obtained by Mr. WHITE, and that
5 he could move forward with the municipal bond offering even if he did not intend to
6 complete construction of the Silver Sound Corporate Center. Thereafter, in
7 approximately September of 2000, Mr. WHITE learned from Mr. Martin that he had no
8 intention to construct the Silver Sound Corporate Center. Instead, Mr. Martin stated an
9 intention to use bond proceeds to install the public infrastructure and utilities, and then
10 attempt to sell the property and pay off the bondholders. Mr. WHITE knew that was
11 contrary to representations made in connection with the municipal bond offering. Mr.
12 WHITE knew further that construction of the Silver Sound Corporate Center and full
13 occupancy of the more than 500,000 square feet of office space was to be the source of
14 revenue from which the bonds were to be repaid. Mr. WHITE also knew that Mr.
15 Martin's revealed intention to not construct the corporate center was contrary to
16 representations made to the bond broker-dealers, investors and the District.

17 h. In approximately October 2000, Mr. WHITE agreed to act as the
18 president of Goldman Sig, Inc., a Washington corporation. The ostensible purpose of
19 Goldman Sig was to act as the lender for Mr. Martin's project, and to take the place of
20 Signal Mortgage as the previous lender.

21 i. On or about October 25, 2000, John WHITE signed two new loan
22 agreements on behalf of Goldman Sig, Inc. These loan agreements replaced the previous
23 agreements identifying Signal Mortgage as the lender. One was a construction loan
24 agreement committing \$43 million for building the Silver Sound Corporate Center. The
25 ostensible source of funds for this loan, according to information WHITE received from
26 Edward Tezak and Mr. Martin, was an individual client of Tezak's at Goldman Sachs.
27 Mr. WHITE knew the premise of this loan was fraudulent because Mr. Martin had no
28 intention to build the buildings and no intention to borrow these funds. Mr. WHITE thus

1 knew that representations to broker-dealers, investors and the District concerning this
2 loan were false and fraudulent. Mr. WHITE also signed a second loan agreement
3 purportedly for a \$20 million line of credit guaranteeing repayment of the municipal
4 bonds. That line of credit also was to be provided by Edward Tezak's client at Goldman
5 Sachs. Based upon Mr. WHITE's previous dealings with Mr. Martin, he had reason to
6 know this loan too was false and fraudulent.

7 j. On or about October 25, 2000, Mr. WHITE attended the closing of
8 the municipal bond issuance by the Holmes Harbor Sewer District. Mr. WHITE knew
9 that various of the bond documents, the Holmes Harbor Sewer District, and the bond
10 purchasers relied upon the ability of Goldman Sig, Inc., to provide \$43,000,000 in
11 construction financing for the building of the Silver Sound Corporate Center. Mr.
12 WHITE knew those representations were false in that Mr. Martin did not intend to build
13 the corporate center. Mr. WHITE also had reason to know from his dealings with Martin
14 that the purported \$20 million line of credit guaranteeing the bonds, also from Goldman
15 Sig as the lender, was false and fraudulent.

16 k. Between approximately December 2000 and June 2001, after closing
17 of the municipal bond issuance, Mr. WHITE attended meetings and participated in
18 conversations where he continued to affirm the availability of funding for Mr. Martin's
19 projects. Those statements were false.

20 l. Mr. WHITE's actions as described above were taken knowingly,
21 deliberately and with intent to defraud. He knowingly conspired and agreed with others
22 to commit the offense of securities fraud and wire fraud.

23 m. The above acts occurred within the Western District of Washington.

24 9. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
25 the United States Attorney's Office for the Western District of Washington agrees not to
26 prosecute defendant for any additional offenses known to it as of the time of this
27 Agreement that are based upon evidence in its possession at this time, and that relate to
28 the conduct described in the Plea Agreement. In this regard, defendant recognizes that

1 the United States has agreed not to prosecute all of the criminal charges that the evidence
2 establishes were committed by defendant solely because of the promises made by
3 defendant in this Agreement. Defendant acknowledges and agrees, however, that for
4 purposes of preparing the Presentence Report, the United States Attorney's Office will
5 provide the United States Probation Office with evidence of all relevant conduct
6 committed by defendant. At the time of sentencing in this matter, the government agrees
7 to dismiss counts 2 through 20 of the indictment.

8 10. Voluntariness of Plea. Defendant acknowledges that he has entered into
9 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the
10 promises contained in this Plea Agreement, were made to induce defendant to enter this
11 plea of guilty.

12 11. Statute of Limitations. In the event that this Agreement is not accepted by
13 the Court for any reason, or defendant has breached any of the terms of this Plea
14 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
15 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
16 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
17 Agreement by defendant is discovered by the United States Attorney's Office.

18 12. Post-Plea Conduct. Defendant understands that the terms of this Plea
19 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
20 If, after the date of this Agreement, defendant should engage in conduct that would
21 warrant an increase in defendant's adjusted offense level or justify an upward departure
22 under the Sentencing Guidelines (examples of which include, but are not limited to:
23 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
24 pending sentencing, and false statements to law enforcement agents, the probation officer
25 or Court), the United States is free under this Agreement to seek a sentencing
26 enhancement or upward departure based on that conduct.

27 13. Cooperation. Defendant shall cooperate completely and truthfully with law
28 enforcement authorities in the investigation and prosecution of other individuals involved

1 in criminal activity. Such cooperation shall include, but not be limited to, complete and
2 truthful statements to law enforcement officers, as well as complete and truthful
3 testimony, if called as a witness before a grand jury, or at any state or federal trial, retrial,
4 or other judicial proceedings. Defendant acknowledges that this obligation to cooperate
5 shall continue after Defendant has entered a guilty plea and sentence has been imposed,
6 no matter what sentence Defendant receives; Defendant's failure to do so may constitute a
7 breach of this Plea Agreement.

8 Defendant understands that the United States will tolerate no deception from him.
9 If, in the estimation of the United States Attorney, information or testimony provided
10 from the date of the Plea Agreement, proves to be untruthful or incomplete in any way,
11 regardless of whether the untruthfulness helps or hurts the United States' case, the United
12 States Attorney for the Western District of Washington may consider that Defendant has
13 breached this Plea Agreement.

14 The United States Attorney's Office for the Western District of Washington, in
15 turn, agrees not to prosecute Defendant for any other offenses, other than crimes of
16 violence, that Defendant may have committed in the Western District of Washington
17 prior to the date of this Agreement about which: (1) the United States presently possesses
18 information; or (2) Defendant provides information pursuant to this Agreement to
19 cooperate with the authorities.

20 The parties agree that information provided by Defendant in connection with this
21 Plea Agreement shall not be used to determine Defendant's sentence, except to the extent
22 permitted by USSG § 1B1.8.

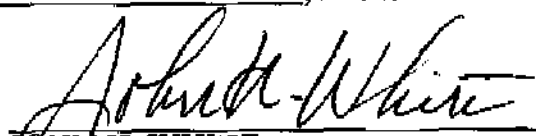
23 In exchange for Defendant's cooperation, as described above, and conditioned
24 upon Defendant's fulfillment of all conditions of this Plea Agreement, the United States
25 Attorney agrees to consider filing a motion, pursuant to USSG § 5K1.1 permitting the
26 Court to sentence Defendant to less than the otherwise applicable Sentencing Guideline
27 range and below the mandatory minimum sentence.

28 Defendant agrees that his sentencing date may be delayed based on the United

1 States' need for his continued cooperation, and agrees not to object to any continuances
2 of his sentencing date sought by the United States.

3 14. Completeness of Agreement. The United States and defendant
4 acknowledge that these terms constitute the entire Plea Agreement between the parties.
5 This Agreement only binds the United States Attorney's Office for the Western District
6 of Washington. It does not bind any other United States Attorney's Office or any other
7 office or agency of the United States, or any state or local prosecutor.

8 Dated this 16th day of MARCH, 2004.

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10 
11 JOHN H. WHITE
12 Defendant

13 TODD MAYBROWN
14 Attorney for defendant

15 
16 KURT P. HERMANN'S
17 Assistant United States Attorney

18 
19 FLOYD G. SHORT
20 Assistant United States Attorney